IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL
Appeal From Order No. 450 of 2004

National Insurance Company Ltd.
Through Divisional Manager, Divisional Office
Nainital Road, Haldwani
District Nainital ... Appellant

Vs

1. Smt. Seela Devi W/o Sri Keval Ram
2. Shri Keval Ram S/o late Sri Ram Swaroop
both R/o Village & P.O. Pahar Pur
District Saharanpur
At present R/o P.S. Industrial Area
Haridwar
3. Shri Vijay Kumar S/o Shri Ramesh Kumar
R/o House No. 18 E.C. Road
District Dehradun ... Respondents

Sri D.S. Patni, learned counsel for the appellant
Sri Bhupesh Joshi holding brief of Sri Vivek Shukla, learned counsel for the respondents

Hon'ble B.C. Kandpal, J.

This appeal has been filed under Section 173 of Motor Vehicle Act, 1988 by the insurer – National Insurance Company Ltd. against the judgment and award dated 09.08.2004 passed by Motor Accident Claim Tribunal/Additional District Judge, Haridwar in M.A.C.P. No. 2 of 2004 Smt. Seela Devi & another Vs Vinay Kumar & another.

2. Brief facts of the case are that on 13.09.2003, Akhilesh Kumar was traveling in Tata Sumo Jeep bearing registration No. UA07E 7056 along with his friend from Gopeshwar Degree College to Rishikesh. The jeep was being driver by its driver in very rash and negligent manner. When the Jeep reached near Kulshari, District Chamoli, it fell into the Khud due to which all the passengers sustained injuries. Akhilesh Kumar also sustained injuries due to the said

accident and he was died after some time. At the time of the accident the deceased was aged about 22 years and was doing the private tuition business and earning Rs. 4000/- per month. Therefore, the claimants/respondents filed claim petition before the Tribunal concerned for an amount of Rs. 10,20,000/- as compensation.

3. The opposite parties contested the claim petition and submitted their separate written statement. The owner of the vehicle has stated in his written statement that at the time of the accident the driver was driving the jeep in a very slow speed but suddenly near the bend one scooter came in a very high speed and to save him, the accident was occurred. It has further pleaded that at the time of the accident the driver was having a valid driving licence.

4. The opposite party/appellant – National Insurance Company Ltd. has also filed its separate written statement. The Insurance Company admitted in its written statement that at the time of the accident the jeep in question was insured with the company but at the same time the Insurance Company has submitted that the claim petition was filed by the claimant in collision with the owner of the vehicle in question.

5. On the basis of the pleadings of the parties, the Tribunal framed relevant issues and the Tribunal concerned after having considered the entire material available on record and after hearing learned counsel for the parties, awarded Rs. 1,52,000/- along with interest @ 8% per annum as compensation to the claimants/respondents against the appellant – National Insurance Company vide judgment and order dated 09.08.2004.

6. Feeling aggrieved by the aforesaid judgment and award, National Insurance Company Ltd. filed this appeal before this Court.

7. Heard Sri D.S. Patni, learned counsel for the appellant, Sri Bhupesh Joshi holding brief of Sri Vivek Shukla, learned counsel for the respondents and perused the record.

8. Learned counsel for the appellant has pressed this appeal on the ground that the offending vehicle was overloaded at the time of the accident. It has also been submitted that the driver of the offending vehicle was not having valid driving licence at the time of the accident.

9. Perusal of the impugned judgment and award passed by the court below, it appears that the Insurance Company has not adduced any evidence before the Tribunal in order to show that the offending vehicle was actually overloaded at the time of the accident. Therefore, in want of any evidence in this regard the conclusion drawn by the Tribunal appears to be absolutely justified that the offending vehicle in question cannot be said to be overloaded at the time of the accident.

10. As far as the driving licence of the driver is concerned, the Tribunal has again observed that the driver of the offending vehicle was having valid driving licence at the time of the accident. The Insurance Company also did not adduce any evidence to show that the driver of the offending vehicle was not having a valid driving licence in his possession at the time of the accident.

11. With the aforesaid observations, I do not find any merit in this appeal. The appeal lacks merit and is liable to be dismissed.

12. The impugned judgment and order 09.08.2004 passed by the Tribinal in favour of the claimants/respondents awarding an amount of Rs. 1,52,000/- along with interest @ 8% per annum is hereby confirmed.

13. Accordingly, the appeal is dismissed. The stay order, if any, stands vacated.

(B.C. Kandpal, J.)

01.12.2006
ASWAL